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M. Ruff, M. Hunter, J. Garcilazo, and W. Luper
11

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION
15

16 **ARCADIO S. ACUNA,**

17 Plaintiff,

18 v.

19 **LEA ANN CHRONES, et al.,**

20 Defendants.
21

C 07-5423 VRW

**DEFENDANTS' NOTICE OF
MOTION AND MOTION FOR
A STAY OF DISCOVERY
PENDING RULING ON
DEFENDANTS' MOTION TO
DISMISS**

22
23 TO PLAINTIFF ARCADIO ACUNA, IN PRO SE:

24 PLEASE TAKE NOTICE THAT Defendants J. Woodford, E. Alameida, R. Kirkland, L.
25 Chrones, G. Williams, N. Grannis, E. Fischer, D. Hawkes, M. Ruff, M. Hunter, J. Garcilazo, and
26 W. Luper (Defendants) move this Court to stay all discovery, including discovery motions,
27 pending a ruling on Defendants' Motion to Dismiss.

28 ///

Defs.' Not. Mot. & Mot. For Stay Disc.

Acuna v. Chrones, et al.
C 07-5423 VRW

INTRODUCTION

Plaintiff Arcadio Acuna (Plaintiff) filed suit against Defendants alleging that Defendants violated various federal and state laws. (Compl. ¶¶ 39-61.) Plaintiff seeks compensatory and punitive damages from Defendants. (*Id.* at 4-4(c).)

On June 23, 2008, Defendants filed a motion to dismiss in this case. Defendants argued, in part, that they are entitled to qualified immunity. (Defs.' Mot. to Dismiss 17:3-18:6.)

Defendants file this motion for a stay of all discovery pending the Court's ruling on Defendants' Motion to Dismiss regarding the defense of qualified immunity.

ARGUMENT

I. Discovery in this Case Should be Stayed Pending This Court Ruling on Defendants' Motion to Dismiss on the Threshold Question of Qualified Immunity.

The United States Supreme Court has made clear that a district court should stay discovery until the threshold question of qualified immunity is resolved. *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998); *Anderson v. Creighton*, 483 U.S. 635, 646 n.6 (1987); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). In *Anderson*, the Court reiterated that "[o]ne of the purposes of the *Harlow* qualified immunity standard is to protect public officials from the broad-ranging discovery that can be peculiarly disruptive of effective government." *Anderson*, 483 U.S. at 646 (internal quotation marks omitted).

"A trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined." *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987); *see also Defensive Instruments, Inc. v. R.C.A. Corp.*, 365 F. Supp. 1053, 1054 (W.D. Pa. 1974). The Ninth Circuit has held, "[a] stay of discovery pending the resolution of another issue is proper if discovery would not affect a decision on that issue." *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988).

To require Defendants to respond to Plaintiff's discovery at this time would defeat the important basis of the qualified immunity standard. A stay in discovery would allow for the issue of qualified immunity to be disposed of before Defendants are required to respond to any

1 discovery, including discovery motions. Further, a stay will not interfere with the decision on
2 Defendants' pending motion to dismiss.

3 CONCLUSION

4 Because this Court has not yet decided whether Defendants are entitled to qualified
5 immunity, Defendants respectfully request that the Court grant this motion to stay all discovery,
6 including discovery motions, pending the Court's ruling on Defendants' Motion to Dismiss on
7 the threshold question of qualified immunity.

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9 Dated: June 23, 2008

10 Respectfully submitted,

11 EDMUND G. BROWN JR.
Attorney General of the State of California

12 DAVID S. CHANEY
Chief Assistant Attorney General

13 FRANCES T. GRUNDER
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14 JONATHAN L. WOLFF
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15
16 /s/ Charles J. Antonen
17 CHARLES J. ANTONEN
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18 J. Woodford, E. Alameida, R. Kirkland, L. Chrones, G. Williams,
19 N. Grannis, E. Fischer, D. Hawkes, M. Ruff, M. Hunter,
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Acuna v. Chrones, et al.**

No.: **C 07-5423 VRW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **June 23, 2008**, I served the attached

**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR A STAY OF DISCOVERY
PENDING RULING ON DEFENDANTS' MOTION TO DISMISS**

**[PROPOSED] ORDER STAYING DISCOVERY PENDING A RULING ON
DEFENDANTS' MOTION TO DISMISS REGARDING THE DEFENSE OF QUALIFIED
IMMUNITY**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Arcadio Acuna, C-43165
Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95532
Pro Per**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **June 23, 2008**, at San Francisco, California.

J. Palomino

Declarant

/s/ J. Palomino

Signature